

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2019 JUL 19 PM 3:55

PHILLIP MCGOWANS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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Civil Action No. RDB-16-3104 DEPUTY

Criminal Action No. RDB-15-0021

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MEMORANDUM ORDER


On June 4, 2019, this Court issued a Memorandum Order (ECF No.¹ 64) denying in part Phillip McGowans (“McGowans” or “Petitioner”) pending Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (ECF Nos. 47, 54). This Court denied McGowans’ claims that the Government breached the plea agreement by sentencing him pursuant to the guidelines for 18 U.S.C. § 924(c), even after the § 924(c) charge was dismissed, and that the Government failed to include the aiding and abetting provision in the plea agreement. (*See* ECF No. 64.) McGowans also claimed ineffective assistance of counsel, which was denied except for his claim that defense counsel failed to file an appeal as he requested. (*Id.*) That claim remained pending, and this Court ordered that an evidentiary hearing be held to make findings of fact and determine if McGowans unequivocally requested an appeal to be filed and if so, whether defense counsel acted contrary to that instruction. (*Id.*) Under the circumstances, counsel was appointed to represent McGowans. (ECF No. 65.)

¹ Docket citations herein refer to the Criminal Action No. 15-0021.

On July 17, 2019, the Government filed a status report (ECF No. 66), in which the Government consented to this Court's granting McGowans' 2255 motion so as to allow him to file a notice of appeal. The Government does not concede that McGowans' motion has any substantive merit or that he will prevail in any appeal. (*Id.*) However, granting 2255 relief to the extent that it allows McGowans to file a notice of appeal will eliminate the requirement for a hearing on McGowans' pending claim. Taking such action will avoid unnecessary expenditure of resources and is in the best interest of judicial economy.

Accordingly, the remaining pending claim—that defense counsel failed to file an appeal as requested—in Petitioner's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (ECF Nos. 47, 54) is GRANTED, and Petitioner is permitted to file a notice of appeal. Petitioner's Motion to Reduce Sentence (ECF No. 46) is DENIED AS MOOT. The Clerk of this Court shall CLOSE this case.

Dated: July 19, 2019.



Richard D. Bennett
United States District Judge